

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendants JOSEPH KOVALCIN (hereinafter “KOVALCIN”) and CLEARVIEW HOME IMPROVEMENTS, INC. (hereinafter “CLEARVIEW”) for unlawful telemarketing abuse by utilizing an automatic telephone dialing system (ATDS) to repeatedly call Plaintiff’s wireless cellular telephone negligently, knowingly, and/or willfully in violation of the Telephone Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, and are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.

5. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act [] is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012). The Ninth Circuit recently affirmed certification of a TCPA class case remarkably similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036, (9th Cir. 2012).

JURISDICTION & VENUE

6. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendants, a company with its principal place of business and State of Incorporation in Utah state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both

diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

7. Venue is proper in the United States District Court for the Central District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)* because the Defendants do business within the state of California and the county of Los Angeles.

PARTIES

8. Plaintiff, THOMAS MARTIN (“Plaintiff”), is a natural person residing in Los Angeles, California and is a “person” as defined by *47 U.S.C. § 153* (39).

9. Defendants regularly do business in the County of Los Angeles, State of California by contacting residents therein for the purpose of soliciting their business in solar paneling, and are therefore each a “person.” as defined by 47 U.S.C. § 153(39).

10. Defendant KOVALCIN is the president and agent for service of process of Defendant CLEARVIEW. In 2008, Defendant KOVALCIN was fined by the FCC for the exact same telemarketing abuses as those suffered by Plaintiff. As a result of the 2008 FCC enforcement action, Defendant KOVALCIN terminated the operations of the business he was operating at the time and opened a new business—Defendant CLEARVIEW HOME IMPROVEMENT, INC. d/b/a CLEARVIEW HOME ENERGY SOLUTIONS. Upon information and belief, Defendant KOVALCIN is regularly engaged in the abusive telemarketing practices engaged in by the agents and employees of Defendant CLEARVIEW, and Defendant KOVALCIN regularly oversees the implementation of these practices and has also been primarily involved in the development and implementation of these practices.

11. The above named Defendants, and their subsidiaries and agents, are

collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

12. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendant and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

13. Beginning in or around January of 2016, Defendants contacted Plaintiff on his cellular telephone, (323) 791-9162, in an attempt to solicit its services to Plaintiff.

14. Defendants used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect the debt allegedly owed by her mother

15. Defendants' calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

16. Defendants' calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

17. Defendants never received Plaintiff’s “prior express consent” to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

CLASS ALLEGATIONS

18. Plaintiff brings this action on behalf of herself and all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

19. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any collection telephone calls from Defendants to said person's cellular telephone made through the use of any automatic telephone dialing system and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

20. Defendants, their employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

21. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendants.

22. Plaintiff and members of The Class were harmed by the acts of Defendants in at least the following ways: Defendants illegally contacted Plaintiff

1 and Class members via their cellular telephones thereby causing Plaintiff and Class
2 members to incur certain charges or reduced telephone time for which Plaintiff and
3 Class members had previously paid by having to retrieve or administer messages
4 left by Defendants during those illegal calls, and invading the privacy of said
5 Plaintiff and Class members.

6 23. Common questions of fact and law exist as to all members of The
7 Class which predominate over any questions affecting only individual members of
8 The Class. These common legal and factual questions, which do not vary between
9 Class members, and which may be determined without reference to the individual
10 circumstances of any Class members, include, but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendants made any collection call (other than a
13 call made for emergency purposes or made with the prior
14 express consent of the called party) to a Class member using
15 any automatic telephone dialing system to any telephone
16 number assigned to a cellular telephone service;
- 17 b. Whether Plaintiff and the Class members were damages
18 thereby, and the extent of damages for such violation; and
- 19 c. Whether Defendants should be enjoined from engaging in such
20 conduct in the future.

21 24. As a person that received numerous collection calls from Defendant
22 using an automatic telephone dialing system, without Plaintiff's prior express
23 consent, Plaintiff is asserting claims that are typical of The Class.

24 25. Plaintiff will fairly and adequately protect the interests of the members
25 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
26 class actions.

27 26. A class action is superior to other available methods of fair and
28 efficient adjudication of this controversy, since individual litigation of the claims

1 of all Class members is impracticable. Even if every Class member could afford
2 individual litigation, the court system could not. It would be unduly burdensome
3 to the courts in which individual litigation of numerous issues would proceed.
4 Individualized litigation would also present the potential for varying, inconsistent,
5 or contradictory judgments and would magnify the delay and expense to all parties
6 and to the court system resulting from multiple trials of the same complex factual
7 issues. By contrast, the conduct of this action as a class action presents fewer
8 management difficulties, conserves the resources of the parties and of the court
9 system, and protects the rights of each Class member.

10 27. The prosecution of separate actions by individual Class members
11 would create a risk of adjudications with respect to them that would, as a practical
12 matter, be dispositive of the interests of the other Class members not parties to such
13 adjudications or that would substantially impair or impede the ability of such non-
14 party Class members to protect their interests.

15 28. Defendants have acted or refused to act in respects generally
16 applicable to The Class, thereby making appropriate final and injunctive relief with
17 regard to the members of the California Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **Negligent Violations of the Telephone Consumer Protection Act**

20 **47 U.S.C. §227 et seq.**

21 29. Plaintiff repeats and incorporates by reference into this cause of
22 action the allegations set forth above at Paragraphs 1-28.

23 30. The foregoing acts and omissions of Defendant constitute numerous
24 and multiple negligent violations of the TCPA, including but not limited to each
25 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

26 31. As a result of Defendants' negligent violations of *47 U.S.C. § 227 et*
27 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
28 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

32. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

(Against All Defendants)

33. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-32.

34. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

35. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

36. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

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FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

1 • As a result of Defendants' negligent violations of *47 U.S.C. §*
2 *227(b)(1)*, Plaintiff and the Class members are entitled to and request
3 \$500 in statutory damages, for each and every violation, pursuant to
4 *47 U.S.C. § 227(b)(3)(B)*.
5 • Any and all other relief that the Court deems just and proper.

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7 **SECOND CAUSE OF ACTION**

8 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

9 **Act**

10 **47 U.S.C. §227 et seq.**

11 • As a result of Defendants' willful and/or knowing violations of *47*
12 *U.S.C. § 227(b)(1)*, Plaintiff and the Class members are entitled to
13 and request treble damages, as provided by statute, up to \$1,500, for
14 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and
15 *47 U.S.C. § 227(b)(3)(C)*.
16 • Any and all other relief that the Court deems just and proper.

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18 Respectfully Submitted this 4th Day of March, 2016.

19 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

20 By: /s/ Todd M. Friedman

21 Todd M. Friedman

22 Law Offices of Todd M. Friedman

23 Attorney for Plaintiff